

APPEAL NO. 020477  
FILED APRIL 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 17, 2002. The hearing officer determined that (1) the respondent (claimant) had disability from \_\_\_\_\_, through the date of the hearing; (2) the employer did not make a bona fide offer of employment (BFOE) to the claimant and the appellant (carrier) is not entitled to adjust the post-injury weekly earnings; and (3) the compensable injury of \_\_\_\_\_, extends to and includes subsequent pneumonia but does not extend to and include Chronic Obstructive Pulmonary Disease and chronic lung disease resulting in a collapsed lung. The carrier appeals the extent-of-injury determination with regard to pneumonia, on sufficiency grounds. The claimant did not file a response. The hearing officer's disability, BFOE, and remaining extent-of-injury determinations were not appealed and are, therefore, final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of \_\_\_\_\_, extends to and includes subsequent pneumonia. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the medical evidence presented, we cannot conclude that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier asserts that the hearing officer erred by considering Claimant's Exhibit No. 21 in reaching a decision with regard to the appealed issue. The carrier points out that although the exhibit was not admitted into evidence it is incorrectly listed as an admitted document in the hearing officer's decision and order. Upon review of the record, we find no indication that Claimant's Exhibit No. 21 was actually considered by the hearing officer, as asserted by the carrier. Indeed, the hearing officer made clear, at the CCH, that Claimant's Exhibit No. 21 would not be considered in reaching a decision. We view the inclusion of Claimant's Exhibit No. 21 in the list of admitted documents as a mere clerical error which does warrant reversal of the appealed issue.

The carrier next asserts that the hearing officer erred in failing to consider a medical report from the carrier's peer review doctor, dated January 25, 2002. The carrier contends that the report is not listed as evidence in the decision and order and, therefore, was not considered by the hearing officer in reaching a decision. Our review of the record reveals

that the medical report was admitted into evidence as Hearing Officer's Exhibit No. 3. The report, along with a cover letter from the carrier dated January 25, 2002, is included in the list of admitted documents but is erroneously referenced as "Carrier Letter January 15, 2002. [Emphasis added.]" Nothing in our review indicates that the letter was not considered by the hearing officer. Rather, it appears that the hearing officer, as the sole judge of the weight and credibility of the evidence, believed the claimant's medical evidence over the opinion of the carrier's peer review doctor. Contrary to the carrier's assertion, the record does not provide a basis for concluding that the hearing officer did not consider medical evidence from the carrier's peer review doctor.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge